



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU SEEKS COMMENT ON REVISIONS TO ANNUAL REPORTING AND CERTIFICATION REQUIREMENTS FOR ICS PROVIDERS

WC Docket No. 12-375

**Comment Date: January 12, 2022**

**Reply Comment Date: January 27, 2022**

By this Public Notice, the Wireline Competition Bureau (WCB or the Bureau) seeks comment on proposed revisions to the instructions and templates for the Annual Reports and Annual Certifications submitted by providers of inmate calling services (ICS).<sup>1</sup> The Commission requires ICS providers to make these filings to enable the Commission to monitor and track trends in the ICS marketplace, increase provider transparency, and ensure compliance with the Commission's ICS rules.<sup>2</sup>

Pursuant to delegated authority,<sup>3</sup> the Bureau created standardized reporting templates (FCC Form 2301(a)) for the Annual Report and a related certification of accuracy (FCC Form 2301(b)),<sup>4</sup> as well as instructions to guide providers through the reporting process.<sup>5</sup> The Bureau amended the instructions and template for the Annual Report in 2020 in order to improve the type and quality of the information collected.<sup>6</sup>

In the *2021 ICS Order*, the Commission revised its ICS rules by adopting, *inter alia*, lower interim rate caps for interstate ICS calls, new interim rate caps for international ICS calls, and a rate cap structure that requires ICS providers to differentiate between legally mandated and contractually required

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<sup>1</sup> 47 CFR § 64.6060(a).

<sup>2</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12892, paras. 9, 267-68 (2015) (*2015 ICS Order*); *see also* 47 CFR § 64.6060(a).

<sup>3</sup> *2015 ICS Order*, 30 FCC Rcd at 12891, para. 267.

<sup>4</sup> *See generally* ICS Annual Reporting Form (2017-2019), available at <https://www.fcc.gov/general/ics-data-collections>; ICS Annual Reporting Certification Form (2017-2019), available at <https://www.fcc.gov/general/ics-data-collections>.

<sup>5</sup> ICS Annual Reporting Form Instructions (2017-2019), available at <https://www.fcc.gov/general/ics-data-collections>.

<sup>6</sup> *See, e.g., Wireline Competition Bureau Announces OMB Renewal of Information Collection Concerning Inmate Calling Services*, WC Docket No. 12-375, Public Notice, 35 FCC Rcd 1456 (WCB 2020) (*2020 OMB Renewal Public Notice*).

site commissions.<sup>7</sup> The new 2021 rules necessitate further changes to the annual reporting and certification templates for which we seek comment herein.<sup>8</sup>

## **I. OVERALL STRUCTURE OF THE ANNUAL REPORTING AND CERTIFICATION REQUIREMENTS**

Pursuant to our delegated authority, we propose to revise the instructions and templates for the Annual Reports and Certifications to be consistent with the Commission's rules.<sup>9</sup> We also propose improvements based on our experience reviewing prior Annual Reports, which has persuaded us that revised instructions would help providers better understand the requirements, making the submitted reports more useful to the Commission and consumers. To that end, we propose to adopt both an Excel-format template and a Word-format template for the Annual Reports to better separate individual data items from narrative responses.<sup>10</sup> We seek comment on these proposed revisions, generally, and on the specific structure, content, and format of the proposed templates and instructions attached hereto. We likewise propose minor revisions to the certification form. Are there other changes or additions we should make to gather better or more accurate data or to make the instructions more clear? Is there additional information or data that we should require providers to submit to enable the Commission to better monitor compliance and industry trends, or increase transparency to the public? Conversely, are there any proposed instructions, inquiries, or data fields that should be removed because they are unnecessary to ensure that providers report uniform and accurate data and other information or they would reduce the burdens on providers in submitting this data?

### **A. Proposed Instructions for Annual Reports**

We seek comment on whether the proposed instructions provide sufficient guidance to ensure that providers use uniform methodologies and report the required information in a consistent manner. Are there any additional changes that would clarify the instructions, including the definitions, to help increase uniformity across providers' responses? We seek comment on all aspects of the proposed instructions, including any proposed revisions not explicitly addressed in this Public Notice.

*Reporting Period.* As has been the case with prior annual reports, the reporting period is the year immediately preceding the year during which the annual report is due. Thus, the reporting period for the next annual reports due April 1, 2022 will be January 1, 2021 through December 31, 2021. The Commission's new interim interstate and international ICS rate caps adopted in the *2021 ICS Order* became effective on October 26, 2021.<sup>11</sup> In various places, the proposed instructions explain how providers may report less detailed information for the period between January 1, 2021 and October 25, 2021 than for the period between October 26, 2021 and December 31, 2021 and going forward.

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<sup>7</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519 (2021) (*2021 ICS Order*); 47 CFR § 64.6030(d), (e).

<sup>8</sup> Pursuant to the Paperwork Reduction Act of 1995 (PRA), we will publish a notice in the Federal Register seeking comment on the information collection requirements for the annual reporting and certification requirements in this Public Notice. See 44 U.S.C. § 3507.

<sup>9</sup> These revised instructions and the associated templates, if adopted, will consolidate and supplant the instructions and templates for earlier iterations of the ICS annual reporting and certification requirements. See *Inmate Calling Services Annual Report Instructions*, WC Docket No. 12-375, *Calling Services for Incarcerated People Annual Reporting and Annual Certification Forms Proposed Instructions*, available at <https://www.fcc.gov/general/ics-data-collections> (providing links to the existing forms and instructions).

<sup>10</sup> For simplicity, we refer to these respective portions of the template as the Word template and the Excel template.

<sup>11</sup> Federal Communications Commission, *Rates for Interstate Inmate Calling Services*, 86 Fed. Reg. 40682 (July 28, 2021).

*General Categories of Information Requested.* The proposed instructions, like for prior reports, require providers to submit certain types of information related to their operations, ICS rates, ancillary service charges, site commissions, and disability access. Do the proposed instructions describe these categories of data in sufficient detail? Is there additional information or data that we should require providers to submit in any of these categories to enable the Commission to better monitor compliance and industry trends, or increase transparency to the public? Are there any changes we should make to the proposed instructions and templates to make them easier for providers to understand?

## **B. Specific Data and Information Inquiries**

*Inmate Calling Service Rates.* Our proposed instructions require providers to submit intrastate, interstate, and international ICS rates across three general categories: (i) highest rates charged, (ii) average rates charged, and (iii) year-end rates charged at a particular facility. Specifically, we propose to require the reporting of the highest 15-minute rate, highest year-end 15-minute rate, and average per-minute rate.<sup>12</sup> With regard to the highest 15-minute rate, we propose to require providers to break down those rates into the first-minute rate and the rate for additional minutes, and to further report the site commission amounts included in those rates. For interstate and international rates, we add a fourth category, that would require providers to identify all rates charged in excess of the applicable rate caps.<sup>13</sup> For international rates, we further propose to require providers to report terminating charges they paid to their underlying international service provider to each destination. Are our proposed instructions for reporting average international termination charges clear? We also propose to seek certain narrative information about the reported rates, including explanations for rates that exceed the Commission's rate caps.

We seek comment on this rate reporting approach. Will seeking rate information in these categories provide the Commission adequate rate information to ensure compliance with the Commission's rules? Are there other changes we can make to the proposed rate reporting structure to make it easier for providers to respond, without sacrificing any necessary information or transparency? That structure is a departure from the previous requirement that a provider must submit every rate charged over the reporting period, a step that should significantly reduce burdens on providers that frequently adjust their rates.<sup>14</sup> We believe the proposed rate reporting structure properly balances the need for accurate information on ICS rates with the need to avoid imposing unwarranted burdens on providers. We invite comment on this assessment.

*Ancillary Service Charges.* The proposed instructions continue to require providers to report a variety of information about any ancillary services charges they have assessed, and we now propose to require a narrative explanation concerning any allocation methodologies among facilities in a single contract, where applicable. Is there any additional information we should seek that would improve the quantity or quality of ancillary service charge information providers are required to submit?

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<sup>12</sup> Our current instructions require providers to report every single rate charged over the reporting period. We believe the proposed categories will significantly reduce the burdens on providers, particularly those that frequently change their rates. Further, because certain providers may charge one rate for the initial minute of a call and another for each successive minute, obtaining information for 15-minute calls (a duration that the Commission has previously treated as the length of a typical call) will help the Commission compare rates among providers without imposing unwarranted burdens on them. *See 2015 ICS Order*, 30 FCC Rcd 12763, *passim* (repeatedly discussing rates for 15-minute calls).

<sup>13</sup> We believe that requiring providers to identify and submit information on all interstate and international rates that exceed the applicable caps will not impose an unwarranted burden, as we expect such violations to be infrequent.

<sup>14</sup> *See, e.g.*, Annual Report of Securus Technologies, LLC, for 2020, WC Docket No. 12-375 (filed April 1, 2020) (Tab II. ICS Rates and Annex – International Rate Plans) (providing every interstate rate and voluminous appendices for international rates and rate plans).

*Site Commissions.* Our proposed instructions seek information concerning site commissions on a more disaggregated basis than we have previously required. We propose to require providers to report their average total monthly site commission payments on a facility-by-facility basis and to separate those payments between legally mandated and contractually prescribed site commission payments, consistent with the Commission's rules.<sup>15</sup> We also propose to require providers to subdivide both types of payments between monetary and in-kind payments and, within those subdivisions, to report the portions of the payments that were either fixed or variable. How should providers report the value of in-kind site commission payments? Should we, for example, require providers to identify the type and quantity of an in-kind payment (such as free or reduced-price equipment) and then assign a dollar value to that payment? Should we instruct providers on how to determine the dollar value of an in-kind payment, and if so, what instructions should we adopt?

*Disability Access and Related Considerations.* Our proposed instructions continue to require providers to report a variety of information about the provision of ICS to incarcerated people with hearing and speech disabilities, including any ancillary service charges that providers have assessed for or in connection with TTY-based calls. We propose to also require a narrative explanation concerning any allocation methodology used in connection with this information, where applicable, and we seek comment on this approach.

*Miscellaneous.* Our proposed instructions contain a variety of questions seeking basic provider information, as well as questions seeking narrative information about provider operations and facilities. Is there additional information the Commission should seek that would help increase transparency and compliance without imposing unwarranted burdens on providers?

## II. PROCEDURAL MATTERS

*Filing of Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System. See FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).<sup>16</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

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<sup>15</sup> 47 CFR § 64.6030(d).

<sup>16</sup> The Protective Order issued in this proceeding permits parties to designate certain material as confidential. *Rates for Inmate Calling Services*, WC Docket No. 12-375, Order, 28 FCC Rcd 16954 (WCB 2013); see also *Rates for Inmate Calling Services*, WC Docket No. 12-375, Order, 35 FCC Rcd 9267 (WCB 2020) (clarifying non-confidential treatment for certain information). Filings that contain confidential information should be appropriately redacted and filed pursuant to the procedure described therein.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>17</sup>

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in this Public Notice and the instructions in order to facilitate our internal review process.

*People with Disabilities.* We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

*Ex Parte Presentations.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>18</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules.<sup>19</sup> Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*Additional Information.* For further information, please contact Minsoo Kim, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1739 or via e-mail at [Minsoo.Kim@fcc.gov](mailto:Minsoo.Kim@fcc.gov).

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<sup>17</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

<sup>18</sup> 47 CFR § 1.1200 *et seq.*

<sup>19</sup> 47 CFR § 1.1206(b).

**APPENDIX A**

**Proposed Instructions and Templates**

The draft instructions and templates for Annual Report are available at this link: [Annual Report Instructions](#).